No. 87-1031

In The

Supreme Court of the United States

October Term, 1987

G. P. REED,

Petitioner,

v.

UNITED TRANSPORTATION UNION, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS

CLINTON J. MILLER, III
Assistant General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107-4250
(216) 228-9400

Counsel for Respondents

QUESTION PRESENTED

Does the six-month limitations period contained in Section 10(b) of the National Labor Relations Act, 29 U.S.C. 160(b), applied by this Court to actions brought against unions for breach of the duty of fair representation in *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151 (1983), apply equally to actions brought against unions alleging violations of Title I of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 411-415?

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STATEMENT OF CASE

Petitioner G. P. Reed (hereinafter, "Reed" or "petitioner"), a member in good standing of the Respondent United Transportation Union (hereinafter, "UTU") and a Secretary-Treasurer of its Local 1715, filed this action on or about August 2, 1985, primarily seeking relief under Section 101 of the Labor-Management Reporting and Disclosure Act (hereinafter, "LMRDA") (29 U.S.C. 411) for

violation of his LMRDA "Bill of Rights" in the UTU's requirement, after audit, that he repay approximately $1,200.00 to the Local that he had in UTU's view impermissibly reimbursed himself. The complaint also contained pendent state law claims sounding in quantum meruit and allegations concerning breach of the fiduciary obligations by UTU officers with respect to their duties under Title V of LMRDA.

After UTU (and its officers specifically named in the complaint, also Respondents herein, to wit, its President, F. A. Hardin, one of its Vice Presidents, K. R. Moore, and one of its International Auditors, J. L. McKinney) moved for summary judgment on the ground, *inter alia*, that Reed had filed his action outside the applicable six-month statute of limitations contained in Section 10(b) of the National Labor Relations Act (hereinafter, "NLRA") (29 U.S.C. 160(b)), the parties submitted affidavits in support of their respective positions as well as legal memoranda.

After hearing oral argument on January 31, 1986, the district court on April 30, 1986 (filed May 1, 1986) entered its order wherein it determined that the claims under LMRDA "Bill of Rights" and the pendent state law claims related thereto were not subject to the six-month statute of limitations contained in 29 U.S.C. 160(b). (Pet. App. at 1a-45a; Jt. App. at 42-68).[1] The Court further found that Reed had not sufficiently complied with Title V of LMRDA to raise any issue with respect to the fiduciary

[1] References to the Appendix to the Petition appear as "Pet. App. at —." References to the Joint Appendix appear at "Jt. App. at —."

obligation of UTU or its officers. *(Id.)* The district court in its order noted the importance of the limitations question and that it was a matter of first impression within the Circuit opening the possibility for certification to the Fourth Circuit under 28 U.S.C. 1292. *(Id.)* After petition to the Fourth Circuit pursuant to such statute, the petition of UTU and its officers was granted. (Pet. App. at 48a-49A). Reed did not seek interlocutory review of the holding of the district court with respect to dismissal of his claim under Title V of LMRDA. After briefing and argument the Fourth Circuit reversed, holding the six-month limitations period in 29 U.S.C. 160(b) applicable to Petitioner's claims. (Pet. App. at 48a-70a).

The facts as found by the district court related to this matter for present purposes are correct and are essentially uncontested. As the district court found, in August 1982, Fred A. Hardin, President of UTU, sent J. L. McKinney, one of UTU's International Auditors, to audit the books and records of Local 1715, where Reed served as Secretary-Treasurer. The audit was prompted by a letter to President Hardin from a member of Local 1715 regarding concerns about financial stability and the future of the Local. (Jt. App. at 13-15). After the audit, McKinney disallowed checks paid by the Local to Reed for "time lost" in the sum of $1,210.20. (Jt. App. at 16-18).

Reed appealed McKinney's findings to President Hardin by letter dated September 6, 1982, claiming that repayment of the sum found was demanded on the basis that he get prior approval for reimbursement for "time lost." (Jt. App. at 18-21). Reed claimed that no such prior approval requirement had existed or been enforced

before its application and enforcement against him. (Jt. App. at 19).

President Hardin denied Reed's appeal by letter dated October 1, 1982, explaining that when a local officer is salaried, his regular salary is meant to cover the responsibilities of his office, and further noting that the sum was disallowed because the claims had been for performance of ordinary duties and responsibilities and because in substantial part the time claimed was for work with a Field Supervisor, who sells UTU Insurance Association policies not related to work of the Local. (Jt. App. at 21-24). Reed thereafter sought to enforce what he perceived to be the "prior approval" policy against other officials of Local 1715, who had to take time off unexpectedly to handle disciplinary matters. Plaintiff's attempts were rejected by President Hardin. On June 28, 1983, Reed met with UTU Vice President K. R. Moore to determine, in his view, whether UTU planned to continue to enforce dual policies with respect to reimbursement of expense payments. Reed claims that Vice President Moore refused to discuss the matter with him. (Jt. App. at 25).

Reed's counsel wrote to President Hardin on July 18, 1983, seeking repayment of the $1,210.20, claiming that different standards were applied to Reed than to other union members, asserting that there was a conflict between Fred Warlick, Chairman of Local 1715, and Reed, and that a violation of 29 U.S.C. 411 existed. (Jt. App. at 24-26). President Hardin responded to Reed's counsel in a July 22, 1983, letter stating that the issue of the time disallowed to Reed as a result of the audit was closed. (Jt. App. at 26). Reed's counsel responded again by letter of August 2, 1983, in which he again requested reimbursement, and

also informed President Hardin that he was going to advise Reed "to commence litigation on or about September 15, 1983, unless the union has properly reviewed and reconciled this matter." (Jt. App. at 26-27).

Reed is a long time officer at the local level within the organization. The friction between the two officers (Reed and Warlick) does go to the bargaining relationship with the employer, as is made clear in the letter from member Clark prompting the audit. (Jt. App. at 13-15). Further, Reed claims Warlick has accused him during negotiations with the employer of being a "company man" and that Warlick has stated all company people are "bastards" (Jt. App. at 28). Warlick denies that allegation (Jt. App. at 38), but admits to disagreement with Reed over bargaining contract proposals.[2] *(Id.)*

Although petitioner claims in brief *(Brief for the Petitioner* at 6) that the audit closely followed a "heated disagreement" with Warlick, the letter from member Clark stands as the only matter of record at this point that caused the audit. Moreover, petitioner's claim that President Hardin is a political ally of Warlick is unsupported beyond its mere assertion in the current record.

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[2] Although the employer here is a public transit authority, since the authority acquired the system from a private carrier and the Department of Transportation makes operating and capital grants to the authority under the Urban Mass Transportation Act of 1964, Section 13(c) of that Act requires continued recognition of pre-existing collective bargaining rights, 49 U.S.C. 1609(c).

SUMMARY OF ARGUMENT

In *DelCostello v. International Bhd. of Teamsters,* 462 U.S. 151 (1983), this Court applied the six-month limitations period in Section 10(b) of the National Labor Relations Act ("NLRA") (29 U.S.C. 160(b)) to actions for breach of the duty of fair representation, rather than the most relevant state statute of limitations, as indicated by the holding in *United Auto Workers v. Hoosier Cardinal Corp.,* 383 U.S. 696 (1966). The rationale of the decision essentially was that uniformity was required with regard to a federal claim, which had a closely analogous federal limitations statute.

The same factors which motivated the Court in *DelCostello, supra,* are equally applicable here. A claim under Title I of the LMRDA cannot be divorced from the statutory background in which it arises. Civil rights claims emanating from 42 U.S.C. 1981 and like enactments not only have their roots in the federal constitution, but also relate to purely personal rights, making them different in kind from an LMRDA "Bill of Rights" claim, which is woven into the fabric of federal labor law. The cases applying the *DelCostello* six-month limitations period to LMRDA Title I claims to date recognize this distinction.

The right to form or belong to a labor union is not protected by the federal constitution. Nor was it fully protected by federal statutory law until the Wagner Act in 1935. In fact, the Sherman Act (15 U.S.C. 1-7) was held to be applicable against the activities of labor unions as combinations in restraint of trade. *Loewe v. Lawlor,* 208 U.S. 274 (1908). It was not until Section 6 the Clayton Act (15 U.S.C. 17) removed the labor of individuals as an article of commerce that the faintest outline of federal recognition of the legitimacy of collective bargaining appeared. Even in the more mature precincts of railway labor, no true recognition of rights to collectively bargain occurred until the first Railway Labor Act was passed in 1926.

The legislative history of the LMRDA itself indicates that the "Bill of Rights" granted to individual union members in Title I was concerned with the continuing development of a federal statutory labor policy and was necessitated in Congress' view principally because labor had outgrown its pure trade union roots to more closely resemble a bureaucracy rather than a fraternity. The primary focus of the Act was the effect this development had on the national labor policy. The Bill of Rights in LMRDA was at best a conferral of rights in an overall statutory scheme designed to protect existing federal labor law rights.

Nothing in *Finnegan v. Leu,* 456 U.S. 431 (1982) is to the contrary. While that case noted the parallel between Title I of the LMRDA and the Bill of Rights in the federal constitution, this Court has cautioned before that the LMRDA as a product of political compromise, cannot always be taken at face value. *Hall v. Cole,* 412 U.S. 1, 11, n.17 (1973) (quoting Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959,* 58 Mich.L. Rev. 819, 852 (1960)). The underlying purpose of the legislation was not to protect personal civil rights in the abstract, but to ensure that the free choice of representatives protected by Section 7 of the NLRA in 1935, insulated from harassment by the Labor Management Relations Act

in 1947, would be driven by democratic processes. Taken together, the three Acts represent a continuum of the national labor policy.

Nor has the applicability of *DelCostello* been limited to "hybrid" suits, such as *DelCostello* itself. The duties of a rail carrier under the status quo provisions of the Railway Labor Act (45 U.S.C. 151 *et seq.)* have been held to be subject to a *DelCostello* six-month limitations defense. *Robinson v. Pan American World Airways,* 777 F.2d 84 (2d Cir. 1985); *Brotherhood of Locomotive Engineers v. Atchison, Topeka & Santa Fe Ry.,* 768 F.2d 914 (7th Cir. 1985). Moreover, even though there is no such thing as an unfair labor practice charge under the Railway Labor Act, the circuit courts have uniformly held *DelCostello* to be applicable to hybrid claims against rail carriers and unions. *Welyczko v. U.S. Air,* 733 F.2d 239 (2d Cir.), *cert. denied,* 469 U.S. 1036 (1984); *Linder v. Berge,* 739 F.2d 686 (1st Cir. 1984); *Sisco v. Consolidated Rail Corp.,* 732 F.2d 1188 (3rd Cir. 1984); *Hunt v. Missouri Pacific R.R.,* 729 F.2d 578 (8th Cir. 1984). Moreover, *DelCostello* has been applied where only the union is sued for breach of the duty of fair representation. *Triplett v. Brotherhood of Ry. and Airline Clerks,* 801 F.2d 700 (4th Cir. 1986); *Ranieri v. United Transportation Union,* 743 F.2d 598 (7th Cir. 1984). This Court has not taken issue with these holdings to date. *See, West v. Conrail,* 481 U.S. —, 95 L.Ed. 2d 32, 36-37 n.2 (1987). Finally, this Court has itself recently used the principles of *DelCostello* to apply the analogous four-year civil enforcement statute of limitations in the Clayton Act to civil claims under RICO. *See, Agency Holding Co. v. Malley-Duff & Assocs.,* 483 U.S. —, 97 L.Ed. 2d 121, 127-28 (1987).

The federal policies at stake are no less important in Title I matters than they are in actions for breach of the duty of fair representation and hybrid actions. The NLRB has consistently maintained that any union coercion against a member, if violative of the policy of the labor laws, such as Title I of the LMRDA, is an unfair labor practice under Section 29 U.S.C. 158(b)(1)(A). *See, e.g., Machinists Local 707,* 276 ULRB 985 (1985). Moreover, it is not difficult to recast a duty of fair representation claim into an LMRDA Title I claim. *See, e.g., American Postal Workers Local Union Local 6885,* 665 F.2d 1096, 1105 n.19 (D.C. Cir. 1981). The family resemblance referred to in *DelCostello* is indeed present in Title I claims as well.

As to the practicalities of litigation, Title I claims are rarely latent. Once discovered, it does not take long to obtain the assistance of a lawyer, as the record in this case amply demonstrates. Moreover, any potential latency problem is cured by the accrual analysis. An action accrues only when the member knows or in the exercise of reasonable diligence should know of the facts comprising the alleged violation.. *Metz v. Tootsie Roll Industries,* 715 F.2d 299, 304 (7th Cir. 1983), *cert. denied,* — U.S. —, 104 S.Ct. 976 (1984). Finally, the lingering threat of assertion of Title I claims can have a debilitating effect within the union if allowed to fester, as noted by the Fourth Circuit below *(Reed v. United Transportation Union,* 828 F.2d 1066, 1070 (4th Cir. 1987)), making speedy resolution all the more desirable in the practicalities of litigation.

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ARGUMENT

I. The DelCostello Analysis and Its Property as Applied by the Majority of the Circuits to LMRDA Title I Claims

In *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151 (1983), this Court held that Section 10(b) of the NLRA (29 U.S.C. 160(b)) should be applied as a general statute of limitations to actions against a labor union by its members for breach of the duty of fair representation. In so holding, this Court rejected as inappropriate in the area of labor law dealing with the duty of fair representation, the general principle that in the absence of a specific federal statute of limitations, the applicable statute of limitations in the forum state be used. *See, United Auto Workers v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966). The reason for this departure from general law in this area was: (1) the clear analogy of Section 10(b) of the NLRA to a suit for the breach of the duty of fair representation; and (2) the federal policy at issue and the practicalities of litigation, i.e., that the national labor policy strongly favors a quick resolution of labor disputes of this type.

Since *DelCostello, supra*, seven circuits, including the Fourth Circuit below, have considered whether the six-month statute of limitations of Section 10(b) of the NLRA (29 U.S.C. 160(b)) should be applied to actions by members against unions for violation of their "Bill of Rights" under the LMRDA (29 U.S.C. 411). Five of those seven circuits have decided that the rationale of *DelCostello, supra*, is equally applicable to LMRDA "Bill of Rights" actions and have applied the six-month statute of limitations. *See, Reed v. United Transportation Union*, 828 F.2d 1066 (4th Cir. 1987); *Clift v. United Auto Workers*, 818 F.2d 623 (7th Cir. 1987), *petition for cert. pending*, No. 87-42; *Davis v. United Auto Workers*, 765 F.2d 1510 (11th Cir. 1985), *cert. denied*, — U.S. —, 106 S.Ct. 1284 (1986); *Adkins v. International Union of Electrical Workers*, 769 F.2d 330, 335 (6th Cir. 1985); *Steelworkers Local 1397 v. United Steel Workers of America*, 748 F.2d 180 (3rd Cir. 1984); *Vallone v. International Bhd. of Teamsters Local 705*, 755 F.2d 520, 521-22 (7th Cir. 1984).

Two circuits recently have refused to apply the six-month statute of limitations to an LMRDA "Bill of Rights" claim. *Doty v. Sewall*, 784 F.2d 1 (1st Cir. 1986); *Rodonich v. House Wreckers Local 95*, 817 F.2d 967 (2d Cir. 1987). The First Circuit had earlier applied the six-month statute of limitations to a claim under 29 U.S.C. 414 (dealing with the obligation in Title I of the LMRDA of labor organizations to provide access to a copy of the collective bargaining agreement to their members). *See, Linder v. Berge*, 739 F.2d 686, 690 (1st Cir. 1984). The Second Circuit had earlier cited *Steelworkers Local 1397 v. United Steelworkers of America, supra*, with favor to support the proposition that it is undisputed that federal labor policy strongly favors prompt settlement of disputes, and noting the language that where the claimed unlawful activity (in that case, violation by an air carrier of Section 2 Fourth of the Railway Labor Act, 45 U.S.C. 152 Fourth) is not latent, but rights are denied openly, a six-month period is an adequate time within which to bring an action. *Robinson v. Pan American World Airways*, 777 F.2d 84 (2d Cir. 1985).

The Seventh Circuit in *Vallone v. International Bhd. of Teamsters Local 705, supra*, adopted the reasoning of

DelCostella, supra, in applying the six-month statute of limitations from Section 10(b) of the NLRA (29 U.S.C. 160(b)) to an LMRDA Title I claim:

> [b]ecause of the strong federal policy favoring uniformity of labor laws and the 'rapid final resolution of labor disputes.' 103 S.Ct. 2292, and because in Section 10(b) 'Congress established a limitations period attuned to what it viewed as the proper balance between the national interests in stable bargaining relationships and finality of private settlements, and an employee's interest in setting aside what he views as an unjust settlement under the collective bargaining system.' *Id.* at 2294 . . . . 755 F.2d at 520-22.

In *Adkins v. International Union of Electrical Workers, supra,* the Sixth Circuit also applied the six-month statute of limitations from Section 10(b) of the NLRA to an LMRDA "Bill of Rights" claim, holding:

> [T]he factors guiding the Supreme Court's choice of the six-month limitations period for unfair labor practices in Section 10(b) of the National Labor Relations Act, 29 U.S.C. 160(b), however, were the close similarity of 'all breaches of a union's duty of fair representation' to unfair labor practices and the Congressional indication of the proper balance between the employee's interests in vindicating his rights and the national interest and finality in labor law and industrial peace. *DelCostello,* 461 U.S. at 170-71. These considerations compel application of Section 10(b) to all unfair representation claims . . . , regardless of the nature or presence of the Section 301 claim . . . 769 F.2d at 334-35.

In *Steelworkers Local 1397 v. United Steel Workers of America, supra,* the Third Circuit followed the *DelCostello, supra,* analysis and held that a LMRDA "Bill of Rights" claim was barred by Section 10(b) of the NLRA (29 U.S.C.

160(b)), finding that both are "addressed to the same basic concern; the protection of individual workers from arbitrary actions by unions . . . ." 748 F.2d at 183. While recognizing that a union member needs sufficient time to vindicate his rights under LMRDA, the Third Circuit held that "rapid resolution of internal union disputes is necessary to maintain the federal goal of stable bargaining relationships, for dissension within a union naturally affects that union's activities and effectiveness in the collective bargaining arena." *Id.* at 184. The Court essentially found no difference between the filing of a Section 301 claim for breach of the duty of fair representation and an LMRDA claim insofar as limitations periods are concerned. *Id.*

The Eleventh Circuit in *Davis v. United Auto Workers, supra,* adopted the result reached by its sister circuits to the date of its decision, feeling "constrained by the rationale of *DelCostello* and the holdings of our sister circuits to reach the same conclusion in the present case." 765 F.2d at 1514.

II. The Impropriety of the "Civil Rights" Analogue Applied by the First and Second Circuits

Only the First and Second Circuits in their recent decisions in *Doty v. Sewall, supra,* and *Rodonich v. House Wreckers Local 95, supra,* have applied *Hoosier-Cardinal, supra,* and rejected the *DelCostello, supra,* analysis, although both circuits, as noted above, had earlier applied *DelCostello* to other areas of law. Those decisions go astray principally in their belief that the "Bill of Rights" portions of LMRDA are akin to civil rights in the federal constitution and in the Civil Rights Acts (42 U.S.C. 1981,

1983), rather than rights conferred as part of an overall regulatory scheme encompassing the national labor policy. *See*, 784 F.2d at 8; 817 F.2d at 977. What this belief fails to recognize is that the "purpose and operation of such rights cannot be divorced from general principles governing our federal labor policy." *Steelworkers Local 1397 v. United Steel Workers of America, supra,* 748 F.2d at 183; *see also, McConnell v. International Bhd. of Teamsters*, 606 F.Supp. 460 (S.D. N.Y. 1985).

The Congress itself in setting the national labor policy has struck a balance in Section 10(b) of the NLRA (29 U.S.C. 160(b)) between "the national interests in stable bargaining relationships and finality of private settlements, and an employee's interest in setting aside what he views as an unjust settlement." *DelCostello, supra*, 462 U.S. at 171. The Congressional balancing of interests in Section 10(b) of the NLRA (29 U.S.C. 160(b)) are the same interests at issue in the LMRDA. "Promoting stable bargaining relationships between unions and employers necessitates prompt resolution of not only fair representation claims arising from employee grievances, but also the type of policy disputes and disciplinary action" upon which a plaintiff may base an LMRDA "Bill of Rights" claim. *See, Steelworkers Local 1397 v. United Steel Workers of America, supra,* 748 F.2d at 182; *Vallone v. International Bhd. of Teamsters Local 705, supra,* 755 F.2d at 520.

The analyses in *Doty v. Sewall, supra, and Rodonich v. House Wreckers Local 95, supra,* are deficient because they divorce the LMRDA "Bill of Rights" from the statutory background in which they arise. As very strong policy matter, clearly expressed by this Court in *DelCostello,*

supra, the national labor policy demands a quick resolution and finality to labor disputes whether they occur internally or externally. The six-month statute of limitations carries out the national labor policy enunciated by the Congress. The three-year North Carolina statute petitioner would have the Court apply here *(Howard v. Aluminum Workers International Union,* 589 F.2d 771 (4th Cir. (1978)) does not.[3]

The fact that the First Circuit in *Doty v. Sewall, supra,* noted the existence of a "hybrid" breach of duty of fair representation/breach of contract claim with the LMRDA claim present in two decisions relied upon by respondents which did apply the six-month period of limitations, *Adkins v. International Union of Electrical Workers, supra,* and *Vallone v. International Bhd. of Teamsters Local 705, supra,* is not decisive. The Seventh Circuit in *Vallone, supra,* gives no indication that the presence of the hybrid action was determinative of the application of the six-month *DelCostello* rule to the LMRDA claim. In *Adkins, supra,* the Sixth Circuit found that the close similarity of all breaches of a union's duty of fair representation required application of the six-month limitations period to the LMRDA claim regardless of the nature or presence of a hybrid claim. 769 F.2d at 335.

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[3] The reliance the non-Government *amici* place on the burden allocation provisions contained in Title III of the LMRDA, dealing with trusteeships, is misplaced. That policy is clearly designed to be a burden-shifting device in the specific situation of a union trusteeship, which is not at issue here. Indeed, the *amici* prove too much by relying upon Title III of LMRDA concerning trusteeships, because in that specific area the Congressional choice with respect to the timing of an action is clearly evident on the face of the statute. That is not true here.

Finally, the Third Circuit in *Steelworkers Local 1397 v. United Steelworkers of America, supra*, saw the family resemblance between an LMRDA claim and a hybrid claim, considering them to be indistinguishable for purposes of applying the six-month limitations period from *DelCostello*, further making clear its view that the family resemblance was sufficient to apply the same limitations period whether the conflict between the member(s) and the union was internal (LMRDA) or external (a hybrid claim). 748 F.2d at 183.

A. The National Labor Policy and the LMRDA "Bill of Rights" in Historical Perspective

Labor unions in the United States did not have an auspicious beginning. Early in the 19th century courts using a criminal conspiracy theory held that any concerted activity, even to raise wages, was an indictable offense. 1 *The Developing Labor Law* (Morris, ed.) (Bur. of Nat'l Affairs 1983) at 4. Although in *Commonwealth v. Hunt*, 4 Met. 111 (1842), Chief Justice Shaw of Massachusetts narrowed the criminal conspiracy doctrine as requiring either an illegal purpose or resort to illegal means (*Id.*), courts remained ill-equipped to deal with the growing labor movement (*Id.* at 5-8).

This Court itself applied the Sherman Act (15 U.S.C. 1-7) to labor unions in *Loewe v. Lawlor*, 208 U.S. 274 (1908) (the *Danbury Hatters'* case), indicating that it would be enough to establish a violation if the concerted activity obstructed the flow of the employer's product in interstate commerce. (*Id.* at 292-93). Although Section 6 of the Clayton Act passed in 1914 removed the labor of an

individual as an article of commerce (15 U.S.C. 17), this Court narrowly construed that exception in *Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1921), and held it to exempt only concerted activity already regarded as lawful at the common law, and even then, only to settle a primary dispute. *See also, United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344 (1922). The results of this Court's construction of the Sherman and Clayton Acts left labor unions in a virtually identical position to what they had encountered under the common law.

After several fits and starts in the railway labor arena,[4] the Congress passed the first Railway Labor Act in 1926, which this Court upheld in *Texas & New Orleans R.R. v. Brotherhood of Railway and S.S. Clerks*, 281 U.S. 548 (1930). The Norris-LaGuardia Act (29 U.S.C. 101-15) followed in 1932, taking federal courts out of the business of issuing injunctions in labor disputes.

With the 1934 amendments to the Railway Labor Act (45 U.S.C. 151, *et seq.*) setting the stage, the National Labor Relations Act enacted in 1935 (29 U.S.C. 151, *et seq.*) created a right to organize, and made it enforceable, unlike the earlier provisions of the National Industrial Recovery Act (NIRA) enacted in 1933 (48 Stat. 198). The rights to organize, bargain collectively and engage in concerted activity contained in Section 7 of the Act (29 U.S.C. 157) "were considered essential to establish a balance of bar-

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[4] The Erdman Act, enacted in 1898 (30 Stat. 424 (1898), was the first statutory recognition of labor unions. It applied only to employees engaged in the operation of interstate trains. Its mediation provisions were in effect until the Government took over the railroads in World War I. However, this Court held its anti-union discrimination provision invalid in *Adair v. United States*, 208 U.S. 161 (1908).

gaining power between employer and employee and thereby to avoid the pitfalls and inadequacies which had characterized earlier labor legislation." I *The Developing Labor Law, supra*, at 28. The implementation of those rights was left particularly to the provisions of Section 8 (29 U.S.C. 158), which defined employer unfair labor practices. This Court upheld the constitutionality of the NLRA in *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937), adopting a more liberal approach to use of the commerce power that it had previously.

Criticism of the NLRA commenced immediately after its passage, principally along the lines that it was "one-sided legislation," in its provision for majority rule which, in the view of the critics, deprived minorities and individual employees of their negotiation rights. I *The Developing Labor Law, supra*, at 30. The passage of the Labor Management Relations Act in 1947, *inter alia*, created Section 8(b) in its entirety, adding six union unfair labor practices, principal among which, for purposes of the present discussion, was Section 8(b)(1) (29 U.S.C. 158(b)(1)), which forbid union restraint or coercion of employees in the exercise of the rights guaranteed in Section 7. It is clear from the language of the statute itself that the addition of rights against harassment by the freely chosen representative itself related to the overall exercise of the cornerstone of the federal labor policy embodied in Section 7 of the Act (29 U.S.C. 157).

That did not change with the passage of the LMRDA in 1959. The purpose of the Senate version (S. 1555) was "to correct the abuses which have crept into labor and management and which have been subject of investigation by

the Committee on Improper Activities in the Labor and Management Field for the past several years." S. Rep. No. 187, 86th Cong., First Sess. (1959), in 2 U.S. CODE CONG. AND ADMIN. NEWS at 2318, 86th Cong., 1st Sess. (1959). It was recognized that the trade union movement was facing difficult internal problems, brought on by having grown well beyond its modest beginnings as relatively small, closely knit associations of working people where personal, fraternal relationships were characteristic. (*Id.* at 2322). Unions had become like other American institutions, large and impersonal, acquiring bureaucratic tendencies and characteristics, with their memberships like other Americans having sometimes become apathetic in the exercise of their personal responsibility for the conduct of union affairs. (*Id.*) Although finding that American labor in general desired to conduct its internal affairs democratically, it would not be possible to guarantee internal union democracy without use of the coercive powers of the Government. (*Id.*) Just as much a focus of the legislation was the recognition that employees' rights to form and join unions without interference and to enjoy freely the right to collectively bargain had been impinged by certain employer conduct, such as the use of middle men to organize "no-union" committees and to engage in other activities to prevent union organization among employees. (*Id.* at 2322-23). It was recognized that in the imposition of governmental standards great care should be taken not to undermine union self-government or weaken unions in their role as collective bargaining agents. (*Id.* at 2323).

The House in the consideration of its bill covering the same topic (H.R. 8342) made many of the same findings with regard to the need for legislation ensuring democratic

practices in the exercise of Section 7 rights. H. Rep. No. 741, 86th Cong., 1st Sess. (1959), in 2 U.S. CODE CONG. AND ADMIN. NEWS 2428-29, 86th Cong., 1st Sess. (1959). The Conference Committee had little difficulty in reconciling the two versions of Title I of each bill, which became Title I of LMRDA. Conf. Rep. No. 1147, 86th Cong., 1st Sess. (1959), Statement of the Managers on the Part of House, in 2 U.S. CODE CONG. AND ADMIN. NEWS 2503-04, 86th Cong., 1st Sess. (1959).

It is apparent that all that the Congress was concerned with in the passage of Title I of LMRDA was to ensure that the exercise of Section 7 rights to freely choose representatives would not be inhibited by undemocratic internal union conduct. To characterize these rights as either purely economic or purely civil rights misses the point. Title I of LMRDA simply cannot be considered in alien juxtaposition to the historical development of the national labor policy, for it is part of that development and policy. LMRDA rights serve the same purpose as the NLRA and LMRA rights. The family resemblance these rights bear to the rights protected by Section 10(b) of the NLRA (29 U.S.C. 160(b)) cannot be denied. The rights at issue here arise out of a clearly stated and fully developed national labor policy. They do not arise out of the federal constitution or the Civil Rights Acts (42 U.S.C. 1981, 42 U.S.C. 1983).

While this Court in *Finnegan v. Leu,* 456 U.S. 431 (1982) has noted the parallel between Title I LMRDA rights and the Bill of of Rights in the federal constitution, it has also cautioned in the past that the LMRDA, as a product of political compromise, cannot always be taken at

face value. *Hall v. Cole,* 412 U.S. 1, 11 n.17 (1973) (quoting Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959,* 58 Mich. L.Rev. 819, 852 (1960)). In *Finnegan v. Leu, supra,* itself this Court recognized that the LMRDA "Bill of Rights" was "necessary to further the Act's primary objective of ensuring that unions would be democratically governed and responsive to the will of the membership," 456 U.S. at 435-36. Thus, the LMRDA "Bill of Rights" are inextricably intertwined with the national labor policy.

Respondents submit also that this Court's cautionary words in *Hall v. Cole, supra,* are equally applicable here because the underlying purpose of LMRDA was not to protect rights in the abstract, but to ensure that the freedom of choice granted by Section 7 of the NLRA in 1935 and insulated from harassment by the Labor Management Relations Act of 1947, would be driven by democratic processes. The granting of LMRDA Title I rights implements the Section 7 rights that are the cornerstone of the national labor policy. The opinions of the First Circuit in *Doty v. Sewall, supra,* and the Second Circuit in *Rodonich v. House Wreckers Local 95, supra,* are deficient in failing to recognize that. Their underpinning is that Title I LMRDA rights bear a closer resemblance to civil rights contained in the federal constitution or the Civil Rights Acts than they do to rights contained in the continuum of the national labor policy. It is from that erroneous premise that both decisions reached the erroneous conclusion that the *DelCostello* analysis is not appropriate in LMRDA Title I cases.

B. Impact of Internal Union Matters on Bargaining

The case at bar plain and simple involves an apparently protracted dispute between one local union officer (Chairman Fred Warlick) and another local union officer (Reed). Just as the Third Circuit in *Steelworkers Local 1397 v. United Steelworkers of America, supra,* found that friction between a local union and the international union threatens stable bargaining relationships between the international and the employer, thus triggering the application of the six-month limitations period from *DelCostello* (748 F.2d at 184), so too the friction between these two local officers carries with it the same threat of instability, as the Fourth Circuit noted below. 828 F.2d at 1070. In fact, the non-Government *amici* are forced to admit that the facts of this case, and particularly the dispute about petitioner's status as a "company man," indicates some impact on economic relations between union and employer and on labor peace. (*Brief for Ass'n for Union Democracy and Public Citizen* at 16-17). The facts of this case frankly do no more than demonstrate the obvious in this regard.

III. Application of DelCostello Principles to Other Areas of Federal Law

The six-month limitations period from *DelCostello, supra,* has been extended to other areas of federal law. Indeed, although petitioner relies upon *Monarch Long Beach Corp. v. International Bhd. of Teamsters Local 812,* 762 F.2d 228 (2d Cir. 1985) for the proposition that the Second Circuit refused, prior to *Rodonich v. House Wreckers Local 95, supra,* to extend *DelCostello* beyond its hybrid action limits, it did apply the six-month limitations period to an action brought under the Railway Labor Act alleging

that employees were discharged for pro-union activities in violation of Section 2 Fourth of that Act (45 U.S.C. 152 Fourth). *See, Robinson v. Pan American World Airways, supra.* In *Monarch, supra,* the Second Circuit refused to extend the six-month period to secondary boycott actions brought by businesses against unrelated unions. It was not a collective bargaining dispute. Nor did it arise in a labor-management relationship context. Its relationship to the national labor policy overall was tangential.

But the Second Circuit in *Robinson, v. Pan American World Airways, supra,* cited *Steelworkers Local 1397 v. United Steel Workers of America, supra,* with favor, to support the proposition that it is undisputed that federal labor policy strongly favors prompt resolution of disputes, and noting the language in *Steelworkers Local 1397* that where the claimed unlawful activity is not latent, but rights are denied openly, a six-month period is an adequate time in which to decide whether to bring an action. 777 F.2d at 87. The same is true in the case at bar. A veteran union official (Reed), with more than competent counsel assisting him, made what appears to have been a conscious judgment not to pursue a Bill of Rights action existing in August of 1983 until August of 1985.

The Seventh Circuit also has applied the six-month limitations period to a claim arising under Section 2 First of the Railway Labor Act (45 U.S.C. 152 First) (requiring carriers to make and maintain agreements) in *Brotherhood of Locomotive Engineers v. Atchison, Topeka & Santa Fe Ry.,* 768 F.2d 914, 919 (7th Cir. 1985).

Moreover, even though there is no such thing as an unfair labor practice charge under the Railway Labor Act, the circuit courts have uniformly held *DelCostello* to be

applicable to hybrid claims against rail carriers and unions. *Linder v. Berge,* 739 F.2d 686 (1st Cir. 1984); *Sisco v. Consolidated Rail Corp.,* 732 F.2d 1188 (3rd Cir. 1984); *Hunt v. Missouri Pacific R.R.,* 729 F.2d 578 (8th Cir. 1984); *Welyczko v. U.S. Air,* 733 F.2d 239 (2d Cir.), *cert. denied,* 469 U.S. 1036 (1984). Additionally, *DelCostello* has been applied where only the union is sued for breach of the duty of fair representation. *Triplett v. Brotherhood of Ry. and Airline Clerks,* 801 F.2d 700 (4th Cir. 1986); *Ranieri v. United Transportation Union,* 743 F.2d 598 (7th Cir. 1984); *Erkins v. United Steelworkers of America,* 723 F.2d 837, 839 (11th Cir.), *cert. denied,* — U.S. —, 82 L.Ed. 2d 825 (1984). This Court has not taken issue with the holdings in the Railway Labor Act cases to date. *See, West v. Conrail,* 481 U.S. —, 95 L.Ed. 32, 36-37 n.2 (1987).

Finally, this Court itself recently used the principles of *DelCostello* to apply the analogous four-year statute of limitations in the Clayton Act to civil claims under RICO. *See, Agency Holding Corp. v. Malley-Duff & Assocs.,* 483 U.S. —, 97 L.Ed. 2d 121, 127-28 (1987).

IV. Application of DelCostello Principles to LMRDA Title I Claims

A. The Family Resemblance of Title I Claims to Unfair Labor Practices

The consistent policy of the NLRB that any union coercion, if it impairs a policy Congress has imbedded in the labor laws, is an unfair labor practice under 8(b)(1)(A) of the Act (29 U.S.C. 158(b)(1)(A)), approved by this Court in *Scofield v. NLRB,* 394 U.S. 423, 430 (1969), is demonstrative of the family resemblance that LMRDA

Title I claims bear to Section 10(b) of the NLRA (29 U.S.C. 160(b)) because LMRDA Title I rights are imbedded in the labor laws.

In *Buffalo Newspaper Guild,* 220 NLRB 79, 86-87 (1975) the Board found an unfair labor practice charge concerning the discipline of a member for complaining about LMRDA matters. In *Operating Engineers Local 400,* 225 NLRB 596 (1976), the union was held to have violated Section 8(b)(1)(A) in a classic LMRDA situation, discipline for intra-union political activities. Although the non-Government *amici* cite *East Texas Motor Freight,* 262 NLRB 968 (1982) for the proposition that this line of cases has been rejected by the Board, the language referred to is gratuitous, and has not been cited as supportive of the proposition since. Indeed, *Machinists Local 707,* 276 NLRB 985 (1985) reaffirmed this line of cases in confirming the validity of a Section 8(b)(1) charge for discipline in the form of filing of charges for making comments critical of union officials.

The circuits are split with regard to this Board doctrine. *Compare, Helton v. NLRB,* 656 F.2d 883, 896 n.67 (D.C. Cir. 1981) (approval of NLRB position that union conduct infringing upon LMRDA rights constitutes an unfair labor practice under Section 8(b)(1)(A)), *with, NLRB v. Local 139, Operating Engineers,* 796 F.2d 985 (7th Cir. 1986) (rejects LMRDA violation as basis for Section 8(b)(1) charge unless effect on employment can be shown). Nonetheless, it is apparent that at a minimum there is a family resemblance between a violation of LMRDA rights and unfair labor practices, thus subjecting such claims to the *DelCostello* six-month limitation.

Additionally, the decisional law clearly indicates that there is an interchangeability between LMRDA Title I

claims and claims of breach of the duty of fair representation. *See, Trail v. International Bhd. of Teamsters,* 542 F.2d 961, 966, 968 (6th Cir. 1976) (no distinction noted between LMRDA and duty of fair representation claims); *American Postal Workers Union Local 6885 v. American Postal Workers Union,* 665 F.2d 1096, 1105 n.19 (D.C. Cir. 1981) (claims for violation of LMRDA Title I rights and breach of the duty of fair representation are interchangeable and duplicative); *see also, Aguirre v. Automotive Teamsters,* 633 F.2d 168 (9th Cir. 1980); *Alvey v. General Electric Co.,* 622 F.2d 1279 (7th Cir. 1980).

B. The Federal Policies at Stake

The decisional law cited above supporting the proposition of the family resemblance of an LMRDA Title I claim to an unfair labor practice charge and/or a claim for breach of the duty of fair representation is also supportive of the proposition that the federal policies at stake are also the same. As argued above, LMRDA Title I rights are part of the fabric of the national labor policy. There is no realistic way of treating them separately. The federal policy at stake in all instances is the national labor policy.

C. The Practicalities of Litigation

The practicalities of litigating Title I claims is such that they are rarely latent. *Steelworkers Local 1397 v. United Steelworkers of America, supra,* 748 F.2d at 184. Once discovered, it did not take long for petitioner in the case at bar to obtain the assistance of counsel. Moreover, any potential latency problem is cured in the accrual analysis, since an action for violation of LMRDA Title I rights would accrue at the same time that an action for the breach of the duty of fair representation would accrue, that is,

when the member knows or in the exercise of reasonable diligence should know of the facts constituting the alleged violation. *Dozier v. Trans World Airlines,* 760 F.2d 849 (7th Cir. 1985); *Metz v. Tootsie Roll Industries,* 715 F.2d 299, 304 (7th Cir. 1983), *cert. denied,* — U.S. —, 104 S.Ct. 976 (1984); *see also, Shapiro v. Cook United,* 762 F.2d 49, 50 (6th Cir. 1985) (*per curiam*); *Howard v. Lockhead-Georgia Co.,* 742 F.2d 612, 614 (11th Cir. 1984).

Additionally, the practicalities of litigation arguments made by petitioner (*Brief for the Petitioner* at 49-50) are equally applicable to breach of the duty of fair representation cases. The practicalities of litigating a civil rights case discussed in *Burnett v. Grattan,* 468 U.S. 42 (1984) are simply inapposite here because the same policy questions are not present. This case deals with the national labor policy. As argued above, the civil rights analogy is simply inappropriate.

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CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

CLINTON J. MILLER, III
Assistant General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107-4250
(216) 228-9400

Counsel for Respondents